

ARKANSAS SUPREME COURT

No. CACR 07-866

WILLIE RAY ESTER
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered December 4, 2008

PRO SE MOTION FOR PHOTOCOPY
OF TRANSCRIPT AT PUBLIC
EXPENSE [CIRCUIT COURT OF
CLEVELAND COUNTY, CR 2006-49]

MOTION DENIED.

PER CURIAM

On December 18, 2006, judgment was entered reflecting that petitioner Willie Ray Ester had been found guilty by a jury of four counts of delivery of a controlled substance for which an aggregate sentence of 960 months' imprisonment was imposed. An appeal from the order was not perfected, and petitioner sought and was granted leave to lodge the record belatedly. *Ester v. State*, CR 07-866 (Ark. Sept. 20, 2007) (per curiam). The Arkansas Court of Appeals affirmed the judgment. *Ester v. State*, CACR 07-866 (Ark. App. May 28, 2008).

Petitioner, who contends that he is indigent, now seeks at public expense a copy of the trial transcript lodged on appeal.¹ As grounds for the request, petitioner states only that without a copy of the transcript he will be unable to present to the court anything but conclusory allegations based

¹For clerical purposes, the motion has been filed under the docket number assigned to the direct appeal of the judgment that was lodged in the Arkansas Court of Appeals. This court decides all motions for photocopying at public expense because such motions are considered to be requests for postconviction relief. *See Williams v. State*, 273 Ark. 315, 619 S.W.2d 628 (1981) (per curiam).

on his memory of the trial. Petitioner does not refer to any particular allegation he desires to raise to a court or a particular postconviction remedy available to him at this time. If he is referring to our postconviction rule, Arkansas Criminal Procedure Rule 37.1, the time to file a petition had already elapsed when the instant motion was filed.²

Indigency alone does not entitle a petitioner to free photocopying. *Washington v. State*, 270 Ark. 840, 606 S.W.2d 365 (1980) (per curiam). A petitioner is not entitled to a photocopy of material on file with either appellate court unless he or she demonstrates some compelling need for specific documentary evidence to support an allegation contained in a petition for postconviction relief. *See Austin v. State*, 287 Ark. 256, 697 S.W.2d 914 (1985) (per curiam). Petitioner has not made a showing of compelling need for a copy of the transcript of his trial.

It should be noted that when an appeal has been lodged in either this court or the court of appeals, the appeal transcript remains permanently on file with the clerk. Persons may review a transcript in the clerk's office and photocopy all or portions of it. An incarcerated person desiring a photocopy of a transcript may write this court, remit the photocopying fee, and request that the copy be mailed to the prison. All persons, including prisoners, must bear the cost of photocopying. *Moore v. State*, 324 Ark. 453, 921 S.W.2d 606 (1996) (per curiam).

Motion denied.

²Criminal Procedure Rule 37.2(c) provides in pertinent part that a petition for postconviction relief must be filed within sixty days of the date the mandate was issued following affirmance of the judgment of conviction. The mandate in this case was issued June 17, 2008. Petitioner filed this motion ninety-four days after that date. Time limitations imposed in 37.2 (c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition. *Benton v. State*, 325 Ark. 246, 925 S.W.2d 401 (1996) (per curiam).